



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 11 November 2020

Language: English

Classification: Confidential

**Order for Submissions on the Conduct of Proceedings
Concerning the Review of the Indictment**

Specialist Prosecutor
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Counsel for Hysni Gucati
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Duty Counsel for Nasim Haradinaj
Bastiaan Martens

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 41 and 39(2) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 57 and 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 24 September 2020, the Single Judge issued, upon request,² arrest warrants against Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") (collectively, "Suspects"), as well as orders for their transfer to the Specialist Chambers' detention facilities in The Hague, the Netherlands ("SC Detention Facilities").³

2. On 25 September 2020, the Suspects were arrested in Kosovo.⁴ Mr Gucati and Mr Haradinaj were transferred to the SC Detention Facilities on 25 and 26 September 2020, respectively.⁵

¹ KSC-BC-2020-07, F00061, President, Decision Assigning a Pre-Trial Judge, 29 October 2020, confidential and *ex parte*. Prior to this decision, the President had assigned the same Judge as Single Judge; see KSC-BC-2020-07, F00003, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2020-07, F00009, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders*, 22 September 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. A public redacted version and a confidential redacted version of this request were filed on 1 October 2020.

³ KSC-BC-2020-07, F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020, public; KSC-BC-2020-07, F00012/A03/COR/RED, Single Judge, *Public Redacted Version of the Corrected Version of Arrest Warrant for Nasim Haradinaj*, 24 September 2020, public; KSC-BC-2020-07, F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public; KSC-BC-2020-07, F00012/A04/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public.

⁴ KSC-BC-2020-07, F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public; KSC-BC-2020-07, F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public.

⁵ KSC-BC-2020-07, F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, public, with Annex 1, confidential; KSC-BC-2020-07, F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, public, with Annex 1, confidential.

3. On 29 September 2020 and 1 October 2020, Mr Haradinaj and Mr Gucati made their respective first appearances (collectively “First Appearances”), during which they were informed of the reasons of their arrest.⁶ During the first appearance of Mr Haradinaj, the Specialist Prosecutor’s Office (“SPO”) indicated that it anticipated filing an indictment against the Suspects within 30 days.⁷

4. On 27 October 2020, the Single Judge issued the “Decision on Defence Challenges”.⁸ That same day, he issued the “Decision on Request for Immediate Release of Nasim Haradinaj” and the “Decision on Application for Bail”, dismissing Defence challenges to the Suspects’ continued detention.⁹

5. On 30 October 2020, the SPO filed a strictly confidential and *ex parte* indictment against the Suspects (“Indictment”), seeking its confirmation by the Pre-Trial Judge.¹⁰

II. APPLICABLE LAW

6. Pursuant to Article 38(4) of the Law, upon determining that a well-grounded suspicion exists that a person is criminally liable for any offence within the jurisdiction of the Specialist Chambers, the SPO shall file an indictment together with supporting material. Pursuant to Rule 86(2) of the Rules, the indictment shall be classified as confidential and *ex parte* when filed before the Pre-Trial Judge.

⁶ KSC-BC-2020-07, Transcript, 29 September 2020, public; KSC-BC-2020-07, Transcript, 1 October 2020, public.

⁷ KSC-BC-2020-07, Transcript, 1 October 2020, public, p. 15. *See also* KSC-BC-2020-07, Transcript, 29 September 2020, public, pp. 12-13.

⁸ KSC-BC-2020-07, F00057, Single Judge, *Decision on Defence Challenges*, 27 October 2020, public.

⁹ KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020, public, para. 33; KSC-BC-2020-07, F00059, Single Judge, *Decision on Application for Bail*, 27 October 2020, public, para. 25.

¹⁰ KSC-BC-2020-07, F00063, Specialist Prosecutor, Submission of Indictment for Confirmation and Related Requests, 30 October 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

7. Pursuant to Article 39(2) of the Law, the Pre-Trial Judge shall review the indictment and supporting material to determine whether he is satisfied that a well-grounded suspicion has been established by the SPO, and therefore whether to confirm the indictment.

8. Pursuant to Rule 57(2) of the Rules, the Pre-Trial Judge shall review a decision on detention on remand upon expiry of two months from the last ruling on detention.

III. DISCUSSION

9. When an indictment is submitted prior to the arrest and detention of a suspect, the Defence is granted access to the indictment and the supporting material under Rule 102(1)(a) of the Rules, only after its confirmation by the Pre-Trial Judge.

10. However, in the present case, the Suspects, against whom the Indictment has been filed, have already been arrested and are continuing to be held in detention. While they have been provided with the arrest warrants, they do not now know the specific charges levied against them in the Indictment. They have already been made aware of the SPO's intention to file an indictment against them by the end of October 2020, albeit that the actual Indictment was filed *ex parte*, pursuant to Rule 86(2) of the Rules. Importantly, the Suspects have the right to be provided with all essential information in order to be able to obtain an effective review of their detention.


11. Therefore, the Pre-Trial Judge is minded, in the specific circumstances of the present case, to make available to the Suspects the Indictment, if necessary with redactions. Then, if they so wish, for reasons of fairness, they may also make submissions on the Indictment while it is being reviewed by the Pre-Trial Judge. This is without prejudice to the Suspects' exercise of rights under the Law and the Rules. The disclosure of supporting material and related adoption of protective measures will unfold in accordance with the applicable framework.

12. Prior to making a decision to this effect, the Pre-Trial Judge would benefit from receiving submissions from the Parties on this issue by Tuesday, 17 November 2020.

IV. DISPOSITION

13. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **ORDERS** the Parties to file written submissions, by Tuesday, 17 November 2020, on the possibility of making available to the Defence the Indictment, if necessary with redactions, and on the possibility of allowing the Defence, if they so wish, to make submissions on the Indictment while it is being reviewed by the Pre-Trial Judge.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 11 November 2020
At The Hague, the Netherlands.